IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	: Whitehouse, et al.	Art Unit	: 2881
Serial No.	: 09/901,428	Examiner	: Kiet Tuan Nguyen
Filed	: July 9, 2001	Conf. No.	: 8546

Title : MULTIPOLE ION GUIDE ION TRAP MASS SPECTROMETRY WITH MS/MSN ANALYSIS

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Pursuant to 37 C.F.R. § 41.41, Appellants respond to the Examiner's Answer as follows:

CERTIFICATE OF MAILING BY EFS-WEB FILING

I hereby certify that this paper was filed with the Patent and Trademark Office using the EFS-WEB system on this date: December 14, 2010.

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(2) TABLE OF AUTHORITIES

None

(3) STATEMENT OF ADDITIONAL FACTS

None

(4) STATEMENT OF REAL PARTY-IN-INTEREST

In the Brief on Appeal filed April 6, 2009, Real Party-in-Interest was listed as Analytica of Branford, Inc. Real Party-in-Interest is now **PerkinElmer Health Sciences, Inc**.

(5) ARGUMENT

Appellant's arguments as to why it should prevail are presented in its Brief on Appeal filed April 6, 2009. Appellants will not burden the Board by repeating those arguments here. However, in addition to those arguments, appellants present below additional responses concerning certain arguments made by the Examiner in his Examiner's Answer:

At Section (9) on page 3 of the Examiner's Answer, the Examiner states that "[b]efore any interference may be referred to the BPAI…, appellant must provide information required under 37 CFR 41.202(a)(1) through (a)(6)."

Appellant's response is that the Examiner misinterprets 37 CFR 41.202(a), which states that "An applicant … *may* suggest an interference with another applicant or patent…" (emphasis added). In other words, the rule is permissive and does not require an applicant to provide the information required under 37 CFR 41.202(a)(1) through (a)(6) as the Examiner contends. Indeed, an interference may be suggested by the Examiner absent such showing by an applicant. 37 C.F.R. 41.202(c).

In Section (12) on page 5 of the Examiner's Answer, the Examiner states that "[t]he specification is completely silent in reciting and teaching the following limitations: a) "means for providing a delay between the release of the pulses of trapped ions and initiation of pulses or push-pull pulses in the Time-Of-Flight instrument," and b) "means for adjusting the delay to improve the duty cycle efficiency of ions with the second mass to charge ratio" as recited in claims 99 and 115."

Appellant's response is that rather than focus on the actual language of claims 99 and 115, the Examiner continues to misquote appellant's claims as reciting "*means for* providing a delay…" and "*means for* adjusting the delay." (Emphasis added). Without conceding that the specification does not provide written description support for such means, appellant's claims include no such recitations and the Examiner's contentions regarding such "means" are

misdirected. Written description support for claims 99 and 115, as recited, is set forth in appellant's Brief on Appeal.

In Section (13) on page 15 of the Examiner's Answer, the Examiner states that "[s]ince the claims 99 and 115 recite a method of operating a mass spectrometer but not a method of processing chemical molecules, thus all features that are used to operate the mass spectrometer must show in the Drawing(s)."

Appellant's response is that the Examiner has misrepresented the claims and provides no legal basis for its conclusion. Both claims 99 and 115 recite, in their preamble, "[a] method for effecting mass analysis on an ion stream" not "a method of operating a mass spectrometer" as implied by the Examiner. While both claims recite as steps "passing the ion stream through a first mass resolving spectrometer," this is only one of several steps recited by each claim and none of the other steps refer expressly to a mass spectrometer. Thus the Examiner's representation that the claims "recite a method of operating a mass spectrometer" is incorrect.

Even if appellant's claims did recite "a method for operating a mass spectrometer" in their preamble, the Examiner has provided no legal authority supporting his contention that this would somehow require that "all features that are used to operate the mass spectrometer must show on the Drawing[s]" where such features are not recited by the claims. Nor is appellant aware of any such authority.

For these reasons, and the reasons stated in the Appeal Brief, appellant submits that the final rejection should be reversed.

The fees in the amount of $540 are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: December 14, 2010

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